

In the
Indiana Supreme Court

CLARK COUNTY COUNCIL, et al.,)	Clark Circuit Court Cause No.
Appellants,)	10C01-0506-PL-375
)	
v.)	Supreme Court Cause No.
)	10S00-0606-CV-199
Daniel F. DONAHUE, et al.)	
Appellees.)	
)	

ORDER REFERRING CASE FOR MEDIATION

This matter involves a dispute between the Clark County Council and the four judges of the Circuit and Superior Courts of that county over the funding of probation services. After the trial court judge to whom this Court assigned this matter ruled in favor of the judges on certain aspects of the case, the Council brought this appeal.

We have studied the submissions of the parties with care and have been impressed by the commitment that both reflect to providing efficient and effective service to the citizens of Clark County. We recognize in particular the fiscal pressure under which the Council has been placed, in part by mandates of the federal court with respect to jail overcrowding and of state law with respect to the cost of incarcerating juveniles, and in part by state property tax laws and regulations. We recognize as well the profound obligations that the judges have to ensure that the criminal cases and civil disputes (like divorces, auto accidents, and small claims) that the people of Clark County bring to their courts are promptly and fairly resolved.

Of particular importance in this case is the recognition that both parties give to the absolute public safety imperative of a strong County probation system so that offenders who have been released from confinement are properly supervised.

This Court appreciates that both parties have identified and pressed legal issues and arguments of considerable consequence. But we are of the view that this case is, at bottom, a funding dispute of the kind that has been encountered and resolved in many counties over the years without resort to litigation of this kind. A Court declaration on the legal questions presented to us here would likely resolve uncertainty on some points of law but could well constrict the ability of counties and courts to work through similar budget disagreements in the future. Rather than render a binding legal opinion in what, to repeat, we regard as primarily a funding dispute, we believe that it is in the best interests of the parties here (and of councils and judges of other counties whose ability to find a mutually satisfactory solution to similar disagreements in the future might well be unduly constrained by such an opinion) for the parties earnestly to engage in mediation to seek a mutually agreeable resolution of their dispute.

Accordingly, the Court DIRECTS as follows:

1. On the Court's motion, this case is referred to mediation. *See* Ind. Appellate Rule 20; Ind. Alternative Dispute Resolution Rules 1.6, 2.2.

2. Within 15 days of this order, the parties may: (a) choose a mediator from the Continuing Legal Education Commission's (hereinafter "Commission's") registry; or (b) agree upon a non-registered mediator, who must be approved by this Court and who shall serve with leave of this Court. *See* A.D.R. 2.4.

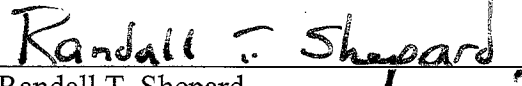
3. In the event that the parties do not notify this Court that they have selected an agreed mediator within 15 days of this order, the Court will designate one or more registered mediators from the Commission's registry.

4. The Court expects the mediation process to begin immediately and to proceed with all due deliberate focus. To this end, the parties are afforded up to five (5) weeks from the date of this order within which to seek a mediated resolution of their differences. The mediator or mediators shall submit a mediation report in compliance with A.D.R. 2.7(E)(1) within ten (10) days after completion of the mediation process, but no later than August 28, 2006. If an agreement is reached, the parties shall comply with A.D.R. 2.7(E)(2) by August 28, 2006. These documents shall be submitted to this Court, with a copy provided to the trial court. The Court will then take the matter under advisement and issue further orders as appropriate.

5. Jurisdiction over this case is remanded to the trial court for the limited purpose of resolving any disputes that may arise in connection with the mediation process to the extent not otherwise addressed in this order, and to otherwise do those things necessary and proper to facilitate the mediation process. In all other respects, we retain jurisdiction over the case.

The Clerk is directed to send a copy of this order to the Hon. Elaine Brown, Special Judge, Clark Circuit Court; and to all counsel of record.

Done at Indianapolis, Indiana, this 12th day of July, 2006.


Randall T. Shepard
Chief Justice of Indiana

All Justices concur.